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# LAWS RELATING TO THE RELEASING OF PUPILS FROM PUBLIC SCHOOLS FOR RELIGIOUS INSTRUCTION

By

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*Specialist in School Legislation, Office of Education*

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# LAWS RELATING TO THE RELEASING OF PUPILS FROM PUBLIC SCHOOLS FOR RELIGIOUS INSTRUCTION

By WARD W. KEESECKER
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The practice of releasing pupils from public schools during regular public-school hours to enable them to attend religious instruction given outside of the school under the direction of one or more religious denominations has presented a number of perplexing legal questions.[1] Among some of the questions which have been raised in this connection are:

(*a*) Do constitutional and statutory provisions which prohibit the use of public funds or public buildings for sectarian instruction or the teaching of religious doctrines or tenets extend so far as to prohibit the use of public-school time for religious or sectarian instruction?

(*b*) Is the practice mentioned in violation of compulsory school attendance laws which require attendance during the "full" or "entire" time schools are in session?

(*c*) May attendance upon religious instruction by pupils released from the public school for that purpose be coerced, directed, or supervised by public-school authorities?

(*d*) May public-school authorities give pupils credit toward school graduation for religious instruction done outside of the school by church authorities? Does this practice amount to the giving of credit for sectarian instruction?

(*e*) Does releasing certain pupils to attend religious instruction and retaining others for the remainder of the school day result in religious discrimination?

For the most part these questions remain generally unsettled, and it should be understood that no attempt is made here to answer them. Rather, the aim is merely to indicate some of the legal principles involved and to make available general information pertaining to the law on the sub-

[1] See Davis, Mary Dabney. Week-day Religious Instruction Classes for Public-school Pupils Conducted on Released School Time. U.S. Office of Education Pamphlet No. 36.

ject which may be helpful to teachers, superintendents, and others interested in the movement for week-day religious instruction.

Obviously these pages are limited to a statement of principles involved in or sanctioned by constitutional and legislative provisions, judicial decisions, and opinions of attorneys general. With respect to the United States more than a century ago Justice Story observed that "* * * the whole power over the subject of religion is left exclusively to the State governments, to be acted upon according to their sense of justice and the State constitutions."[2] Apparently, few if any legal developments since that time have resulted in any substantial change in the relationship between the Federal and State Governments with respect to religion. Hence, the present legal status of releasing pupils from public school in order to enable them to attend upon religious instruction in church schools is to be sought for in varying constitutional provisions, legislative enactments, and court decisions of the different States. Questions pertaining to the subject which have been presented for legal determination have varied and the legal aspects of each manifestation of religious instruction or influence must be judged from the viewpoint of the State law under which it occurs.

In approaching the legal questions arising out of religious instruction during public-school time it may be helpful to keep in mind (1) that under the governments of the American Commonwealths a considerable amount of human affairs and human interests is left to individual or private enterprises and that religious instruction is preeminently one of these interests; (2) that the teaching of religion in public schools or as a part of the public-school curriculum has been opposed not because instruction in that field is regarded as unimportant but rather because interpretations put upon religion and its teachings are so involved and controversial that its teaching in connection with the public schools is liable to engender religious disputes and controversies; (3) that under American constitutions in matters of religious rights the principle of majority rule is less applicable than in general matters of state; and (4) that the public schools

[2] Commentaries on the Constitution, sec. 1879.

and the church or week-day religious schools represent distinctly separate school systems with respect to aims, maintenance, and control.

The week-day religious school as a plan for instruction in religion apart from the regular denominational schools is a comparatively new venture. Briefly, the week-day religious schools are to complement the secular education of youth with at least a minimum of religious training. These schools represent a movement essentially within the churches and by the churches, and the schools of that movement are church schools. They are under the control of the churches and do not constitute an organic connection or part of the public-school system. They are schools with a religious purpose in the achievement of which the educational method is used.

## LEGISLATION RELATING TO THE RELEASING OF PUPILS FROM PUBLIC SCHOOL FOR RELIGIOUS INSTRUCTION

Legislation which specifically permits the releasing of pupils from public school in order that they may attend upon religious instruction in churches or church schools exists in the following seven States: Illinois, Iowa, Michigan, Minnesota, Oregon, South Dakota, and West Virginia.[3] The legislative provisions in these States are quoted below:

### ILLINOIS

SEC. 274. Every person having custody or control of any child between the ages of 7 and 16 years, shall, annually, cause such child to attend some public or private school for the entire time during which the public school in the district wherein the pupil resides is in session: *Provided*, That in the following cases children shall not be required to attend the public schools: * * * (d) Any child over 12 and under 14 years of age during the hours while in attendance at confirmation classes (*The School Law of Illinois, 1931*).

See Rulings of Attorney General, page 13.

### IOWA

4410. * * * Any person having control of any child over 7 and under 16 years of age, in proper physical and mental condition to attend school, shall cause said child to attend some public or private

[3] In the District of Columbia the practice is permitted by School Board regulation.

school for at least 24 consecutive school weeks in each school year, commencing with the first week of school after the first day of September, unless the board of school directors shall determine upon a later date, which date shall not be later than the first Monday in December. * * *

4411. The preceding section shall not apply to any child * * * while attending religious services or receiving religious instructions (*School Laws of Iowa, 1929*).

## MICHIGAN

418. SEC. 2. * * * In the following cases children shall not be required to attend the public schools: * * * (g) Any child 12 to 14 years of age while in attendance at confirmation classes conducted for a period of not to exceed 5 months in either of said years (*State of Michigan General School Laws. Revision of 1927*).

## MINNESOTA

319. * * * Any child may be excused from [school] attendance upon application of his parent, guardian, or other person having control of such child, to any member of the school board, truant officer, principal, or city superintendent, for the whole or any part of such period, by the school board of the district in which the child resides, upon its being shown to the satisfaction of such board:

3. That it is the wish of such parent, guardian, or other person having control of any child, that he attend for a period or periods not exceeding in the aggregate 3 hours in any week, a school for religious instruction, conducted and maintained by some church or association of churches, or any Sunday school association incorporated under the laws of this State, or any auxiliary thereof, such school to be conducted and maintained in a place other than a public-school building, and in no event, in whole or in part, at public expense; provided that no child shall be excused under *this section*[4] while attending upon instruction, according to the ordinances of some church, under and pursuant to subdivision 4 of this act.

4. That if there is no public school within reasonable distance of his residence, or that conditions of weather and travel make it impossible for the child to attend; provided, first that any child 14 years of age or over, whose help may be required in any permitted occupation in or about the home of his parent or guardian may be excused from attendance between April 1st and November 1st in any year; but this proviso shall not apply to any cities of the first and second class; provided, second, that nothing in *this act*[4] shall be construed to prevent a child from being absent from school on such days as said child attends upon instruction according to the ordinances of some church (*Laws of Minnesota Relating to the Public-School System, 1931. P. 83, sec. 319*).

[4] These words were italicized by compiler.

### OREGON

SEC. 35–3501. * * * Any child attending the public school, on application of his guardian or either of his parents, may be excused from such school for a period or periods not exceeding 120 minutes in any week to attend week-day schools giving instruction in religion (*School Laws of Oregon, 1931*). [*Attorney General's Opinions, Aug. 3, 1928.*]

### SOUTH DAKOTA

SECTION 277. * * * A child may on application of his parent or guardian be excused from school for 1 hour per week for the purpose of taking and receiving religious instruction conducted by some church or association of churches or any Sunday School Association incorporated under the laws of the State or any auxiliary thereof; said time, when pertaining to schools in open country, may be used cumulatively each separate month, as local circumstances may require. The County Superintendent of Schools in common school districts and the Board of Education in consolidated and independent school districts shall decide at what hour pupils may be thus excused, and in no event shall such instruction be given in whole or in part at public expense (*Session Laws of South Dakota, 1931, ch. 138, sec. 277, par. 6*).

### WEST VIRGINIA

SEC. 122. * * * Every person who has legal or actual charge of a child or children not less than 7 nor more than 14 years of age shall cause such child or children each year to attend a free day school for the full school term of the district or independent district in which such person resides; provided, however, that such person shall be exempted from the foregoing requirement for any of the following causes: * * * (h) Observance of regular church attendances (*The School Law of West Virginia, 1929*).

## COURT DECISIONS RELATING TO THE RELEASING OF PUPILS FROM PUBLIC SCHOOLS FOR RELIGIOUS INSTRUCTION

Four court decisions have been rendered pertaining to the practice of releasing pupils from public school to enable them to attend religious instruction. These decisions are summarized below in the order in which they occurred. The summary is limited to a statement of the principal facts and questions involved and the position taken by the court in each case.

## VERMONT

*Ferriter* v. *Tyler*, 48 Ver. 444, 21 Am. Rep. 133 (1876)

### FACTS IN THE CASE

The local school committee in Brattleboro was requested to exempt Catholic children from attending school on all holy days. The school committee replied:

> To comply with your request involves closing two of our schools, and greatly interrupting several others. This we never have done and cannot do. We have great pride in our schools, in which the Catholic children are treated as well as any.

Some 60 Catholic children, by direction of their parents, were kept from school to attend services on said 4th of June, being, as stated in the bill, "holy Corpus Christi day." Thereupon the school authorities ruled that children who had absented themselves on holy day could not return to school without an assurance from their parents or their priest that in the future they would comply with the rules of the schools. The parents and the priest refused to comply with this proposal, and filed a bill in chancery to restrain the school authorities from excluding their children from school.

### QUESTIONS INVOLVED AND HOW ANSWERED BY THE COURT

*Question:* Does excluding children from public school for their refusal to attend said school on holy days interfere with the freedom of religious conscience of said children, their parents, or priest, and therefore violate article III of the State constitution?

*Answer:* * * * the action of the committee touches not nor affects the worship of Almighty God by the orators * * *; nor does it touch or affect their religious sentiment * * *; nor does it in any manner interfere with or control the rights of conscience in the free exercise of religious worship. * * * The not consenting that the children of the orators might leave the schools for the purpose of attending divine worship on the day in question did not touch the belief of the orators as to the character of that day. * * * * * * It would seem to be trifling with a momentous subject, to claim that article III [of constitution] was designed to prohibit the legislature from enacting any law, the carrying into effect of which might interfere with the wishes, and tastes, and feelings of any of the citizens in the matter of religion.

The Methodist, * * * the Episcopalian, * * * the Congregationalist, and the Presbyterian, and Baptist * * * and the man of no preference and no religion, all, and all their children, are subjected to the school laws, and to their administration.

*Question:* Do parents have authority to control school attendance of their children?

*Answer:* We are not prepared to sanction a view of the subject that would subordinate the authority of the (school) committee in the matter of the attendance of registered scholars, to the will of parents. On the other hand, we do not hesitate to hold and declare as a matter of law, that, in this respect, the citizen is in subordination to the lawful rules for the regulation of schools * * * and this is for the same fundamental reason that he is in subordination to the statutes themselves * * *; and it is no more his right to defy those rules than it is to defy and disregard any statute that affects him as a citizen in respect to schools, or any other subject involving the common need. * * *

## WASHINGTON

STATE v. FRAZIER, 102 WASH. 269, 173 PAC. 35 (1918)

FACTS IN THE CASE

The board of education of the city of Everett, whence this came, adopted the following resolution:

Resolved * * * that high-school credit for Bible study may be allowed to the members of the Everett high school to the extent of one credit on Old Testament Scriptures and one credit on New Testament Scriptures, under the following conditions:

*First.* Credit shall be granted only after successfully passing an examination covering the historical, biographical, narrative, and literary features of the Bible, and based upon an outline to be hereafter adopted by the board of education.

*Second.* Supervision of instruction in Bible shall not be undertaken by the high school beyond the furnishing of a syllabus or outline and the setting of examination, rating of papers, and determining credit.

*Third.* It is contemplated that all personal instruction and interpretation shall be given in the home or by the religious organizations with which the students are affiliated, following the outline furnished by the board of education.

*Fourth.* Not more than one credit in Bible shall be allowed an individual in any one school year.

*Fifth.* It is assumed that this work will require the equivalent of one 45-minute lesson per week through the school year and the equivalent of three hours per week in outside study.

The Constitution provides that public money shall not be "appropriated for, or applied to, any religious worship, exercise, or instruction. * * *"

The school superintendent refused to give appellants an examination in the course of Bible study or to give credit therefor toward graduation. This is an action to compel him to do so.

QUESTIONS INVOLVED AND HOW ANSWERED BY THE COURT

*Question:* Does examining pupils upon "the historical, biographical, narrative, and literary features" of the Bible result in religious instruction within the meaning of the Constitution"?

*Answer:* The framers of the Constitution * * * declared that "no public money or property shall ever be appropriated or applied to any religious * * * instruction", and in this respect our Constitution differs from any other that has been called to our attention.

But it is said that the teaching is to be upon the historical, biographical, narrative, and literary features of the Bible only, and in this the instruction will be neither sectarian, doctrinal, denominational, or religious. This might be true if all citizens were agreed that the King James translation of the Bible is the true version of the Scriptures, and then only if the teaching were under the control of those who are selected through the means and methods provided by law. But the vice of the present plan is that school credit is to be given for instruction at the hands of sectarian agents. * * *

That Bible history, narrative, and biography cannot be taught without leading to opinion and ofttimes partisan opinion is understood and anticipated by the school board. * * * They * * * provide that "interpretation" shall be given in the home, or by some "religious organization." * * *

With respect to whether giving public-school credit for Bible study outside of school where the Bible may be interpreted by the home or religious organizations constitutes credit for sectarian instruction the court said:

And who of authority in our schools is to say that a pupil shall or shall not have credit if he answers questions in a way that is different from the way intended by those who prepared the course of instruction? It may be said that the pupil is entitled to credit if he answers in a way that is consistent with the faith of his instructor. But there are two objections to this. The one is that the examiner may not know the faith and teachings of those of a different faith; the other and more conclusive objection is that to give a credit in the public school for such instruction is to give a credit for sectarian teaching and influence, which is the very thing outlawed by the Constitution.

Courts have been zealous in protecting the money set apart for the maintenance of the free schools of the country. They have turned a deaf ear to every enticement and frowned upon every attempt, however subtle, to evade the Constitution. Promised benefit and greater gain have been alike urged as reasons, but without avail. *School District No. 20* v. *Bryan,* 51 Wash. 498, 99 Pac. 28, 20 L.R.A. (N.S.) 1033.

In that case it was sought to justify the expenditure of school money for the instruction of children outside of the public schools. * * *

The plan for the education of our youth as outlined by the legislature indicates that it had no intention of ever providing credit for

work done under the tuition of anyone who has not been licensed to teach by the school authorities. * * *

We shall not go far afield when we suggest that it is a matter within the common knowledge of those who followed the discussion attending the forming of our Constitution that it was the purpose of the men of that time to avoid all of the evils of religious controversies, the diversion of school funds to denominational schools and institutions, and the litigation that had occurred in other States. * * *

* * * To compromise opinion on these matters would lead to confusion, which would make the courts the arbiter of what is and what is not religious worship, instruction, or influence, which would be as intolerable to the citizen as it would be to leave a decision to a school board. * * *

The resolution provides that the syllabus or course of study is to be made up by the school board. What guaranty has the citizen that the board * * * will not inject those passages upon which their own sect rests its claims as the true church under the guise of "narrative or literary features", and if so, where would the remedy be found? Surely the courts could not control their discretion, for judges are made of the same stuff as other men, and what would appear to be heretical or doctrinal to one may stand out as a literary gem or as inoffensive narrative to another, and thus the evil at which the Constitution is aimed would break out with its ancient vigor. If the sentiment of the people has so far changed as to demand the things sought to be done, the remedy is by amendment to the Constitution.

## NEW YORK

*Stein* v. *Brown*, 211 N.Y. Supp. 822 (1925)

### FACTS IN THE CASE

The board of education of the city of Mount Vernon excused pupils for 45 minutes once each week during school hours to enable them to receive religious instruction in the churches to which their parents desired them to be sent. Cards, used by the parents to notify school authorities what church they wished their children to attend and used by teachers of religious instruction to notify school authorities when such children were present and received religious instruction at church, were printed by the students in the School of Industrial Arts of the city of Mount Vernon during school hours upon printing presses furnished by public funds. The cost of the cards themselves, upon which the printing was done, was paid by the committee on week-day religious education.

QUESTIONS INVOLVED AND HOW ANSWERED BY THE COURT

*Question:* Is the printing of cards during school hours upon presses and premises purchased and maintained by public funds, which cards are used to facilitate religious instruction by different denominations, lawful?

*Answer:* The fact is that the property of the board was permitted to be used directly in aid of such schools of religious instruction whose members saw fit to avail themselves of the action taken by the defendants. It seems perfectly clear that it was illegal for the defendants to permit the printing of the cards to be done on its presses.

*Question:* Is it lawful to excuse pupils during school hours from regular school studies to attend religious instruction outside of school?

*Answer:* I find nothing in the education law authorizing either the board of education, the State commissioner of education, or the education department to change, limit, or shorten the time of attendance of pupils in public schools, except—for the purpose of aiding and performing labor in the cultivation * * * and care of food products * * * subject to such conditions, etc., "as may be imposed by the commissioner of education, and subject to rules and regulations to be prescribed by him."

Education Law, section 620 * * * prescribes the instruction required in public schools. Religious instruction is not one of them. Consequently it would be unlawful and unauthorized for a board of education to substitute religious instruction in the school in place of the instruction required. To permit the pupils to leave the school during school hours for religious instruction would accomplish the same purpose, and would in effect substitute religious instruction for the instruction required by law.

The courts of this State and other States * * * have uniformly discountenanced attempts to join religious instruction with the instruction prescribed for the public schools. In *Smith* v. *Donahue*, 202 App. Div., 195 N.Y.S. 715, the court said * * * "and the public schools being furnished for all the children, the reading of the Bible was excluded in order that there could be no restraining upon their enjoyment of the public schools and without prejudicing their religious beliefs." (See next case.)

*People ex rel. Lewis* v. *Graves*, 245 N.Y. 195; 156 N.E. 663 (1927)

FACTS IN THE CASE

The school board of the city of White Plains in the year 1925–26 adopted the practice of excusing pupils from public elementary school, upon request from their parents, for 30 minutes each week in order that the pupils might attend at centers of religious instruction provided by the churches

of the various denominations. The arrangement was generally endorsed by the citizens and clergy of the city. The period during which they were excused was the last 30 minutes of the close of the school day on Wednesday—one not devoted to school recitation. No credit was given by the school for work taken in the church classes, and no public money was used to aid the church schools, but cooperation between the public schools and the church schools required a slight amount of time of the public-school teachers for the purpose of registering and checking excuses.

The petitioner alleged that this practice is unlawful and sued to compel its discontinuance.

The Supreme Court, special term in 1926 (215 N.Y. Supp. 632), upheld the legality of the practice just mentioned, which decision was affirmed by the appellate division of the said court in January 1927 (219 N.Y. Supp. 189). On May 10, 1927, the New York Court of Appeals, the highest court of the State, affirmed the two former decisions. A motion for reargument was denied in June 1927 (157 N.E. 882).

### QUESTIONS INVOLVED AND HOW ANSWERED BY THE COURT

*Question:* Is the practice mentioned in violation of the Constitution which prohibits use of public money or property to aid any school or institution wholly or in part under the control of any religious denomination, or in which religious doctrine is taught?

*Answer:* The facts in this case establish no violation of this constitutional prohibition. * * * The thing prohibited by the Constitution is the use of public property and money for the designated purpose, and where there is no such use there is no basis for just claim of constitutional violation.

In that respect this proceeding differs materially from the facts in the *Mount Vernon case* (*Stein* v. *Brown, supra*), where public property was used for the printing of the excuse cards which were printed in the School of Industrial Arts, by the pupils therein, and that action was declared "unlawful and in violation of Article 9, section 4, of the State Constitution." (Sup. Ct. Special Term, 215 N.Y. Supp. 632.)

All that the petitioner can claim in regard to public expense is the time spent by the teacher during school hours in thus issuing and receiving the card, excusing the child (etc.). * * * The acts of the teacher are the same as when excusing a child to attend any religious or secular ceremony at its parent's request. * * * The Constitution is designed for practical purposes and deals with reali-

ties, not fictions or conditions largely imaginary. It is intended to operate benignly in the interest of the governed. (Sup. Ct. Appel. Div. 219 N.Y. Supp. 189.)

Neither the Constitution nor the law discriminates against religion. Denominational religion is merely put in its proper place outside of public aid or support. * * * The separation of the public-school system from religious denominational instruction is thus complete. * * * Eternal vigilance is the price of constitutional rights. But it is impossible to say, as a matter of law, that the slightest infringement of constitutional right or abuse of statutory requirement has been shown in this case. (Court of Appeals, 156 N.E. 663).

*Question:* Is the practice mentioned in violation of the compulsory attendance law requiring attendance during "entire time" schools are in session?

*Answer:* I hold that the excusing of children at the request of their parents for the period and purpose stated * * * was an act within the power of said board, in the exercise of its judgment and discretion * * * not amounting to irregular attendance within the fair meaning of the term, was not an abuse of its discretionary power having been lawfully exercised, a mandamus order cannot be issued to revoke or annul the action taken (Sup. Ct. Special Term, 215 N.Y. Supp. 632).

## RULINGS OF STATE ATTORNEYS GENERAL[5]

### WASHINGTON

In 1916 the Attorney General of the State of Washington was requested to render an opinion on the following question:

May the director of a school district prescribe a course of Bible study for his school students and grant school credit to apply toward graduation * * * to students who successfully pass examinations upon such course of Bible study, provided that such Bible study shall be optional and shall be pursued outside of the public-school buildings, and that no part of the public money, time, or property be used in conducting such courses?

*Answer:* It cannot plausibly be contended that if credits toward graduation in the public schools are to be granted for the successful pursuit of religious study—if inducement is to be held out by the public schools themselves, of direct reward for such study in connec-

[5] The opinion of an attorney general of a State is an opinion only of that official. In the discharge of his usual functions the attorney general acts in an advisory and ministerial rather than a judicial capacity, his opinions being for the information of the officer for whom it is rendered (2 R.C.L. 920). Although the opinions of an attorney general have in no sense the weight or effect of a court decision (*Leddy* v. *Cornell* 52 Colo. 189), in actual practice they are usually followed until or unless overruled by the court. In this way his opinions often affect the rights of persons within his State and, with the exception of judgments and orders of courts, his opinions control public interests more largely than do the acts of any other State official (*State* v. *Burleigh County*, 19 N.D. 819, 124 NW. 417).

tion with such public schools—that the objection to sectarian influence is removed. The object of the statutory provisions is absolutely to sever all connection between sectarian instruction and the instruction given by and in connection with the public schools. * * * The legal objection to the proposed system of Bible study is that the courses of study are made a part of the public-school curriculum. It is immaterial that the pursuit of these studies is optional. With the policy or advisability of these constitutional provisions this office, of course, has nothing to do. Our sole endeavor has been to ascertain their correct legal construction. The question submitted is, therefore, answered in the negative.

## PENNSYLVANIA

In 1924 the Attorney General of Pennsylvania ruled that "The board of school directors * * * have no authority to excuse pupils who are between the ages of 8 and 16 years *during legal school hours* for the purpose of attending denominational schools to receive religious instruction." In 1927 the attorney general of that State held that where pupils are excused from public school to attend week-day religious instruction elsewhere without interrupting the public-school attendance for the required number of school hours, the school authorities may not demand, coerce, direct, or supervise the attendance of the pupils at such week-day religious instruction.

## ILLINOIS

On December 14, 1926, State Superintendent Blair, of Illinois, by letter presented to the Attorney General of that State the following information:

In several States of the Union a plan of religious instruction is being tried. It involves the dismissal of the pupils for a short time once or twice each week to attend religious instruction given in the churches of the community, or in the rooms of the schoolhouse under religious teachers, and for those who do not attend such religious instruction some sort of work in ethics is given in the schoolhouse by the regular teachers. I think very few attempts along this line have been made in Illinois, although there seems to be a demand for some such plan on the part of certain people in a number of communities of the State.

Recently the plan was inaugurated in the school district of Marion, Ill. * * * It involves, according to the statement of the superintendent of schools and of the complainants, a sort of an intermission at 2:15 on Wednesday afternoon for all children whose parents have signed a statement designating the church such parents wished such children to attend. Whenever the distance is great, the plan involves the transportation of the children by the church.

The plan appears also to involve the giving of credit in the regular school course for the work done in these classes in religion. It also involves a control by the school over the children in that their attendance record in school is lowered if they do not attend the religious exercises in the church to which they are assigned.

The plan, according to the complainants, goes further in this line. It appears to involve a deduction from the child's attendance record in the week-day school if he does not attend the religious exercises in his church on Sunday morning.

Below are excerpts from the opinion embodied in the reply by the Attorney General (Carlston) on December 21, 1926:

Since under the statute it is made the duty of the State Superintendent of Public Instruction "to be the legal adviser of school officers and when requested by any school officer to give his opinion in writing upon any question arising under the school laws of the State", the Attorney General has no authority to render a directing opinion but only render an opinion as to whether or not a given state of facts conflicts with either the statutory or constitutional provision of this State.

The Attorney General cited the case of *Herold* v. *Parish Board of School Directors*, 126 La. 1034, and quoted from that decision as follows:

> The general policy of the Government always is to avoid with care any compulsion which infringes on the religious scruples of any, however little reason may seem to others to underlie them. (Quoting Cooley on Constitutional Limitation, p. 585.)

In the *Herold case, supra*, the school board had by resolution ordered that the teacher might read from the Bible at the daily opening exercises of the school and to offer the Lord's Prayer, but provided that when so requested by either the student or the parent or guardian of such student, such student could be excused from the attendance upon such exercises. The court in passing upon such action of the board of education used the following language:

> Under such circumstances, the children would be excused from the opening exercises of the school because of their religious beliefs. And excusing such children on religious grounds, although the number excused might be very small, would be a distinct preference in favor of the religious beliefs of the majority, and would work a discrimination against those who were excused. The exclusion of a pupil under such circumstances puts him in a class by himself; it subjects him to a religious stigma; and all because of his religious beliefs. Equality in public education would be destroyed by such act, under a Constitution which seeks to establish equality and freedom in religious matters. The Constitution forbids that this shall be done.

The Attorney General also quoted from the Supreme Court of Illinois in the case of *People* v. *Board of Education*, 245 Ill. 334, as follows:

> The exclusion of a pupil from his part of the school exercises in which the rest of the school joins separates him from his fellows, puts him in a class by himself, deprives him of his equality with other pupils, subjects him to a

religious stigma, and places him at a disadvantage in the school, which the law never contemplated. All this is because of his religious belief. If the instruction or exercise is such that certain of the pupils must be excused from it because it is hostile to their or their parents' religious belief, then such instruction or exercise is sectarian and forbidden by the Constitution.

These principles announced by these courts would seem to apply to the plan outlined by you, wherein you say:

* * * for those who do not attend such religious instruction some sort of work in ethics is given in the schoolhouse by the regular teachers.

In other words, in view of what the court has said, it would appear that the court would hold that these pupils who are kept in the schoolhouse to study ethics are compelled to study ethics at such time because of their religious belief and that such would subject them to stigma and place them at a disadvantage in the school.

If the school board desires to authorize the dismissal of the school at a certain hour in the afternoon, I can find nothing in the statutes or in the court decisions of this State, or in the provisions of the Constitution, that would interfere with such action on the part of the school board, but when school is dismissed the question arises whether or not the school board and the teachers have the right to control the action of the pupils with reference to the attendance of classes wherein are given instruction in religious subjects. Our court has recognized that religion should be taught, and in the case of *The People* v. *Board of Education*, *supra* [the court], used this significant language:

Religion is taught, and should be taught, in the churches, Sunday schools, parochial and other church schools, and religious meetings. Parents should teach it to their children at home, where its truths can be most effectively enforced.

It is a most commendable act on the part of parents to provide legal means by which their children can be taught concerning the questions of morals and religion. Such children when dismissed from school, as stated in your letter, may attend such church as their parents designate and there receive religious training.

Of course, I take it from your letter that the instruction given to such children upon these religious subjects is given by teachers or ministers, or other parties who give such instruction without any pay whatever from the public-school fund, and further that the transportation of such children from the school to the church in question is paid for by other means than the public-school fund. The school board would have no authority under our law to pay for such transportation, neither would a teacher have authority to receive pay from the public-school fund for her instruction upon such religious subjects to such pupils.

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With reference to the power of the school board to give credit for work done in religious classes outside of the public schools, Mr. Brundage [Carlston's predecessor] said:

Obviously the plan to give credit toward graduation for work done by the pupil in pursuing religious instruction is a proposition to incorporate in the

course required for graduation from the public schools, as an optional study to be pursued outside of the schools and free from their supervision, a subject which our Supreme Court says cannot be lawfully taught in our public schools and which does not come within their province.

This question has never been passed upon by the higher courts of this State [Illinois], but I beg to call your attention to the case of the *State of Washington* v. *Frazier*, 173 Pac., p. 35 L.R.A. 1918 F. 1056, which was a case brought to compel the Superintendent of Schools to give an examination in the course of Bible study and the Court in passing upon such question said:

> And who of authority in our schools is to say that a pupil shall or shall not have credit if he answers questions in a way that is different from the way intended by those who prepare the course of instruction? It may be said that the pupil is entitled to credit if he answers in a way that is consistent with the faith of his instructor. But there are two objections to this. The one is that the examiner may not know the faith and teachings of those of a different faith; the other and more conclusive objection is that to give credit in the public school for such instruction is to give a credit for sectarian teaching and influence, which is the very thing outlawed by the Constitution * * *.
>
> The plan for the education of our youth as outlined by the legislature indicates that it has no intention of ever providing credit for work done under the tuition of anyone who has not been licensed to teach by the school authorities * * *.
>
> The curricula of the public educational institutions cannot be made to include any kind of religious worship, exercises, or instruction.

The constitutional provision passed upon in the Frazier case is very similar to the constitutional provision of the State of Illinois with reference to sectarianism. This decision strongly forbids the board of education from giving any credit in the regular school course for the work done in religious instruction; it would seem necessarily to follow that such practice would clearly be held to violate the statutory and constitutional provisions of our own State. Furthermore, teachers in the act of giving credit for such instruction would be taking up part of their time as public-school teachers and in occupying such time would be using the taxpayers' money for the purpose of giving credit for sectarian instruction, which is prohibited under our constitution.

Notwithstanding one's personal inclination that knowledge of the Scripture should be made available to our school children by every proper method, I am constrained to conclude that in view of the holding of our court and of the courts of our sister States having constitutional provisions similar to ours, our courts would hold a rule embodying the plan outlined by you (State Superintendent of Public Instruction Blair) as being sectarian and in violation of the Constitution of the State of Illinois.

## OREGON

On July 13, 1928, C. A. Howard, superintendent of public instruction of Oregon, presented to the attorney general of that State by letter the following question:

Can the boards of directors of the public schools of Oregon appropriate school funds for the maintenance of week-day schools of religious education?

In answering this question in the negative, the attorney general on August 3 quoted the following language:

No matter what the necessities of the occasion, school directors cannot make an agreement with the authorities of an avowedly sectarian school by which the pupils of the district shall be educated in the sectarian school on payment of a sum for tuition by the district. Such an arrangement violates the constitutional provision which is very general that no part of the public funds shall be used for a sectarian purpose. It would be illegal even if of the greatest advantage to the district, for schools are State, not local, institutions, and the people of the whole State are concerned in everything that affects any one of them either for good or evil.—24 R.C.L., p. 664, sec. 120.

The attorney general continued, and later in the opinion said:

The financial support by a school district of the schools mentioned in your letter is objectionable; first, upon the ground that it would constitute an appropriation of funds of such district for the benefit of a religious or theological institution in violation of section 5, article I, of the Constitution; and for the further reason that such schools are not under the control of the school board, the law providing that all schools shall be under the direction of the school board.—Biennial Report and Opinions of the Attorney General of the State of Oregon, 1926–28.

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